IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

WP(C).No. 19636 of 2006(K)

OA.512/2002 of DEBT RECOVERY TRIBUNAL, ERNAKULAM

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PETITIONER:

K.A.MOHAMMED,S/O.BAPPU HAJI,
KORAMBATHIYIL HOUSE, CHOOLAPPURAM,
KOTTAPPADY, GURUVAYOOR, MANAGING PARTNER,
M/S.POLYMERS,SHED NO.B-40,GOVERNMENT INDUSTRIAL
ESTATE, OLLUR, THRISSUR DISTRICT - 680 306.

BY ADV. SRI.C.P.CHANDRASEKHARAN (CALICUT)
SRI.M.SHAJU PURUSHOTHAMAN

RESPONDENTS:

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1. STATE BANK OF INDIA, REP.BY ITS
BRANCH MANAGER, M.G.ROAD, THRISSUR.

2. THE RECOVERY OFFICER, DEBT RECOVERY
TRIBUNAL, 8TH FLOOR, KSHB BUILDING,
PANAMPILLY NAGAR, KOCHI.

BY ADV. SRI.GEORGE THOMAS(MEVADA), SC, SBI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

WP(C).No.19636 of 2006-K

Dated this the Ist day of February, 2007.

JUDGMENT

The petitioner availed a loan from the first respondent bank. The loan account fell in arrears. The bank moved the Debts Recovery Tribunal for recovering the amount due to it. The O.A. was decreed on 24-6-2004. The petitioner thereafter moved for extending the benefit of One-Time-Settlement Scheme by submitting Ext.P1 letter offering to pay Rs.40 lakhs in full and final settlement on or before 30-11-2005. The bank considered his request and passed Ext.P2 order dated 23-11-2005 extending the benefit of OTS Scheme to the petitioner. As per Ext.P2, the bank agreed to close the loan account on payment of Rs.56,51,998/-. Rs.40 lakhs were to be paid on or before 30-11-2005 and the balance was to be paid within one year together with interest at bank's PLR from the date of settlement till the date of final payment. The relevant portion of Ext.P2 reads as follows:

> " 4. Therefore, the minimum amount to be paid by you as one time settlement is Rs.5651998.00 as against a dues of approximately Rs.89 lacs if you add interest from 31-7-2004 at PLR on the

> dues as per DRC mentioned above.
>
> 5. As you have already indicated your willingness to pay an amount of Rs.40 lacs on or before 30-11-2005, we would like you to pay the amount of Rs.40 lacs as upfront payment and balance in installments over a period of maximum 1 year together with interest at Bank's PLR from the date of settlement till date of final payment."

2. It is common case that the petitioner could not pay Rs.40 lakhs before 30-11-2005. According to the petitioner, as on that date the balance amofunt due was only 23 lakhs. He was liable to pay the entire amount only before 30-11-2006. He was ready with necessary draft as evident from Ext.P5 for clearing the entire arrears. But, the bank did not accept the demand draft offered by him or closed the loan account. In the above background this writ petition is filed seeking the following reliefs:

> i). issue a writ of mandamus directing the Ist respondent bank to grant 3 months time to the petitioner to pay the amounts due to the Ist respondent bank,
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> ii) issue a writ of mandamus directing the respondents to adjourn the sale of the property mortgaged by 3 months to enable the petitioner to pay off the liability due to the Ist respondent.

> Iii). Any other relief that this Honourable Court may deem fit, and
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> iv). The withdrawal of O.T.S. Scheme as per Ext.P2 is illegal and unauthorised by the condition set out in Ext.P2 Scheme, and hence the petitioner is entitled to the benefits of OTS Scheme and therefore prayed that the petitioner is entitled to a declaration that he is entitled to O.T.S. Scheme granted by the respondents and hence Ext.R1(C) letter withdrawing OTS Scheme is illegal and liable to be quashed."

3. The bank has filed a counter affidavit in which it is submitted that the petitioner was not eligible for getting the benefit of OTS Scheme issued by the R.B.I. The debt due from the petitioner was already covered by a decree of the D.R.T. In such cases, the Scheme is not applicable. But, if the petitioner pays the amount as stipulated in Ext.P2, the bank would have been bound to honour its commitment. But, before 24-1-2006 only 11.5 lakhs were paid by the petitioner. Therefore, the bank cancelled the O.T.S. Facility extended to the petitioner by Ext.R1(C) dated 24-1-2006. So, it is submitted that the prayers of the petitioner cannot be granted.

4. In many cases where the loanee could not comply with the stipulations in the orders granting OTS benefits, the banks have agreed to extend the time limit under those orders on condition of payment of defaulted amount with interest applicable as per the bank

rules. When the suggestion was put to the bank, it was submitted on behalf of it that since the original grant of O.T.S. Facility to the petitioner was erroneous, such a course cannot be accepted. It is also submitted that in appropriate cases the bank grants waiver of interest etc. If the petitioner applies, it can be considered whether such benefit could be extended to him.

4. Admittedly, the petitioner did not pay the amounts as stipulated in Ext.P2. But the contention of the learned counsel for the petitioner is that he need only pay the amount within one year period allowed and that he was ready and will to pay it and therefore the bank may be directed to accept the amount and extend the benefit. He is willing to pay additional interest ,if any.

The dispute between the parties in this case falls within the realm of contract. The petitioner does not have the contention that OTS Scheme notified by the R.B.I. Is applicable to debts covered by decrees also. Therefore, this court is not justified in issuing any direction to the bank to extend the facilities under Ext.P2 to him not withstanding the failure of the petitioner to pay the amount due, in time. The petitioner does not have any legal right in this regard and the bank does not owe any duty. But, if the petitioner files a representation seeking appropriate relief in the matter of waiver of

interest etc. along with a copy of this judgment, the competent authority of the bank will consider and pass orders on it, within one month from the date of production of a copy of this judgment. The bank would endevour to extent all possible benefits to the petitioner so that he can close the loan account.

The writ petition is disposed of as above.

K.BALAKRISHNAN NAIR,
JUDGE.

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